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Naturalization on the Whole

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Good Moral Character Does Not Mean Moral Excellence
(Nobody's Good All of the Time)

You have a client who is an LPR who has been convicted of a removable offense. Do you always move forward toward naturalization? **No.**

There will be instances where it is in your client's best interest to remain a lawful permanent resident rather than to apply for naturalization. If your client has been able to avoid removal proceedings despite having been convicted of a removable offense, applying for naturalization will not cure the fact of removability of the offense. On the contrary, applying for naturalization could easily result in your client's being placed in (removal) proceedings, perhaps at a time when he or she will be ineligible for relief, for instance where the manner in which your client became a permanent resident i.e. through a fraudulent marriage may be questioned and result in a loss of Legal Permanent Resident Status.

It is important to be familiar with the relevant authority in order to make these assessments. Research prior to filing is critical.

Though it is impossible to address all possible scenarios in a single paper, this paper's discussion, authorities and strategies will help in identifying potential complications and to determine whether seeking citizenship is advisable for a particular client.

Congress has constitutional authority and the duty to "establish a uniform Rule of Naturalization." Art. I, § 8, cl. 4. To qualify for naturalization, an applicant must:

1. Be a lawful permanent resident, Immigration & Nationality Act, [hereinafter INA] § 318, 8 U.S.C. § 1428.
2. Be 18 years of age or older
3. Meet continuous residence and physical presence requirements
4. **An applicant for naturalization must establish that he or she has been, and continues to be, a person of good moral character. In general, the applicant must show good moral character during the statutory five-year period immediately preceding his or her application for naturalization up to the time of the Oath of Allegiance. Conduct outside the statutory period may also impact whether the applicant meets the requirement. (The 5 years is nominally shortened to 3 years, for the spouse of a United States citizen, and to 1 year, for military).**

5. Must demonstrate knowledge of English language, and of United States history and government.

This paper discusses the “good moral character” requirement.

The good moral character requirement is set out at INA §§ 316(a)(3), 319(a)(1), 8 U.S.C. §§ 1427(a)(3), 1430(a)(1); 8 C.F.R. §§ 316.2(a)(7), 316.10, 329.2(d).

The statutory grounds rendering an applicant ineligible to establish good moral character are defined at INA § 101(f), 8 U.S.C. § 1101(f).

Where there is a criminal record involved, the first thing a lawyer should do is check the statutory bars to establishing good moral character. (It is not the last thing: even where there is no criminal record, the regulations permit consideration of other conduct which may result in a discretionary finding of a lack of good moral character.) Focusing on the criminal bars to establishing good moral character is the starting point.

Begin by assessing whether your client falls within the ever-broadening category of "aggravated felons."

Keep in mind that your client may be classified as an aggravated felon even though an offense may be classified as a misdemeanor under a state's criminal code and the noncitizen never served a day in jail.

This year marks the nearly 25 years of the exponential expansion of the definition of "aggravated felons." Retroactive application of these definitions is a complex and evolving topic and should be researched in connection with each client individually. However, this paper will address some guidelines and points of analysis regarding "aggravated felon" status.

The retroactive application of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, [IIRIRA], § 304(b) to prior convictions has been the subject of much litigation. The original definition was created by Congress in the Anti-Drug Abuse Act of 1988 [ADAA], codified at INA § 101(a)(43) [8 U.S.C.A. § 1101(a)(43)], § 7342, Pub. L. No.100-690, 102 Stat. 4181 (Nov. 18, 1988). Originally, the definition only included murder, drug trafficking as defined in 18 U.S.C. § 942(c)(2)(1988), trafficking in illicit firearms or destructive devices as defined in 18 U.S.C.A. § 921 (1988), or any attempt or conspiracy to commit these offenses. Id. Through legislation enacted in 1990, 1994 and in 1996, Congress has created more than 50 categories of offenses classified as aggravated felonies. INA § 101(a)(43)[8 U.S.C.A. § 1101(a)(43)(1966).

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